Nov 29, 30. Judge Davis
2 1 2-494
Affirmed. Murdock — 71. Pa State, 208.
Davis - 15. = Affirmed.
Judge Strong to write

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~264.~~ 53

THE TOWN OF VENICE, PLAINTIFF IN ERROR,

vs.

EVANDER MURDOCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 16. 1873.

6 Lansing - 125
p 23. of Murdock's brief
Compiled Laws of Michigan.
Vol 1 - p 276
21 - Barbour 580
11 NY

SUPREME COURT OF THE UNITED STATES.

No. 264.

THE TOWN OF VENICE, PLAINTIFF IN ERROR,

vs.

EVANDER MURDOCK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Declaration or complaint	2	1
Answer	24	35
Trial and verdict	33	37
Order staying proceedings for bill of exceptions	34	38
Judgment signed	35	38
Bill of exceptions on behalf of defendant	36	38
Bond for supersedeas and costs on writ of error	66	48
Writ of error	70	49
Citation	71	50
Clerk's certificate	73	51

1 United States circuit court, northern district of New York.

Pleas before the judges of the circuit court of the United States of America for the northern district of New York, at the city of Utica, at the March term of said court, held at said city on the third Tuesday of March, A. D. 1873.

Witness the honorable Lewis B. Woodruff, judge.

CHARLES MASON, *Clerk.*

NORTHERN DISTRICT OF NEW YORK, *ss:*

Be it rememberd that heretofore, to wit, at the March term of said circuit court, A. D. 1873, to wit, and of the 26th day of April, 1873, came Evander Murdock, by David Wright, his attorney, and brought into said court his certain declaration or complaint against the town of Venice, which said declaration or complaint was and is in the words and figures following, to wit:

2 C. C. U. S., N. D. of N. Y., of the term of October, that is to say, of the 26th day of April, as yet of the term of October, 1872.

EVANDER MURDOCK *agt.* THE TOWN OF VENICE.

NORTHERN DISTRICT OF NEW YORK, *ss:*

Evander Murdock, plaintiff in this action, complains of The town of Venice, defendant in this action, and says and states to the court, that he, the said plaintiff, is not a citizen or resident of the State of New York, but that he is a citizen and resident of the State of Iowa; that the defendant is one of the towns of the county of Cayuga, in said State of New York, and is located wholly within the said northern district of New York, and is a municipal corporation for certain purposes, and amongst others, of sueing and being sued upon contracts.

3 That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners, to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds. which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors, who were so as aforesaid appointed to act as such commissioners, should hold the said office of com-

missioners until the then next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided, that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided, that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga railroad or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga, before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. That thereupon afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town-meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and

fifty-three, and numbered one in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 1 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York; the principal to be paid at the same place at the expiration of twenty years from the date thereof.

That the said above-named supervisor and railroad commissioners, at the same time of the execution of said bond, also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof, at the said Bank of the State of New York, in the said city of New York.

4

That afterwards, and before said bond No. 1 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and indorsed upon said bond No. 1 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

That the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 1 as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 1, with the coupons for said interest, as above mentioned, thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon indorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

That the said town of Venice paid all installments of interest upon said bond, from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and

the coupons were, from time to time, as the same were paid, detached from said bond and cancelled.

That afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in the said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 1, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is entitled to demand, have, and receive all the monies due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon, or by virtue thereof, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars, being the principal and interest monies which have accrued thereon and upon said coupons from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not, at the time the several installments of interest upon said bond No. 1, which so as aforesaid remained unpaid, became due and payable, nor has not had, at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said installments of interest, or any, or either of them, or any part thereof, or of any or either of them, could or would have been paid had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and, although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 1, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said several installments of interest monies herein, in this count, above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of one thousand dollars of principal & the interest thereon and upon said coupons.

5 And for a further and second cause of action said plaintiff further says: That heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commis-

sioners, to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds, which should be duly executed under the authority of said act; and wherein and whereby it was further enacted that the said assessors, who were so as aforesaid appointed to act as such commissioners, should hold the said office of commissioners until the then next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town-officers were then elected, two commissioners, to be called railroad commissioners, to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act; and wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad-law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money, and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of

Cayuga, before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two; and thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town-meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town-officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory, or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered two in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 2 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be paid at the same place at the expiration of twenty years from the date thereof.

That the said above-named supervisor and railroad commissioners, at the same time of the execution of said bond, also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof at the said Bank of the State of New York, in the said city of New York.

That afterwards, and before said bond No. 2 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 2 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper, purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 2 as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town as appearing on the last assessment-roll had been obtained and, together with the affidavit of the said supervisor and railroad commissioners thereto attached as required by said act, had been filed as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York, and, to secure the payment thereof, with interest thereon at the rate of seven per cent., paya-

ble semi-annually, delivered the said bond No. 2, with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest moneys which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bonds, from time to time as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were, from time to time as the same were paid, detached from said bond and cancelled.

That afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in the said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 2, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon, or by virtue thereof, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars, being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any holder or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not at the time the principal or any of the several installments of interest upon said bond No. 2, which so as aforesaid remained unpaid, became due and payable, nor has not had, at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said installments of interest, or any or either of them, or any part thereof, or of any or either of them could or would have been paid, had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and, although often requested so to do, the said town of Venice has hitherto wholly refused and still does refuse to pay the said principal or any of the said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 2, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by

reason of the said principal and of said several installments of interest monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand, and have of and from, the said town of Venice the said sum of three thousand dollars, being the aggregate of the principal and of the said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 2, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

7 And for a further and third cause of action said plaintiff further says, that heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie, or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums, and at such times and place as should be agreed upon and expressed in the bonds, which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners should hold the said office of commissioners until the then next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid, comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money, and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga, before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town, at the town meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory, or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered three in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay the bearer of said bond No. 3 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York; the principal to be paid at the same place, at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners, at the same time of the execution of said bond, also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable,
8 which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof at the said Bank of the State of New York, in the said city of New York.

That afterwards, and before said bond No. 3 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 3 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk,

under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 3, as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond, No. 3, with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bond, from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were, from time to time, as the same were paid, detached from said bond and cancelled.

That afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in said State of Iowa, he, the said plaintiff, for a valuable consideration, then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 3, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued andremained, and still remain in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon, or by virtue thereof, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars, being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice,

had not, at the time the principal or any of the several installments of interest upon said bond No. 3, which so as aforesaid remained unpaid, became due and payable, nor has not had, at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said installments of interest, or any, or either of them, or any part thereof, or of any or either of them could or would have been paid, had a demand thereof been made when and as the same due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Venice has hitherto wholly refused and still does refuse to pay the said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 3, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies, which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and the said several installments of interest monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 3, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

9 And for a further and fourth cause of action plaintiff further says that heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds, which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners, should hold the said office of commissioners until the then next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be

sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures duly executed a certain writing obligatory or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered four in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 4 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the

Bank of the State of New York, in the city of New York; the principal to be paid at the same place at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners at the same time of the execution of said bond also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof, at the said Bank of the State of New York, in the said city of New York.

And afterwards, and before said bond No. 4 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 4 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 4 as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with the interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 4, with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bond, from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were from time to time, as the same were paid, detached from said bond and cancelled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 4, together with the principal and interest remaining unpaid thereon, and

said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon or by virtue thereof, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars; being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not, at the time the principal and the said several installments of interest upon said bond No. 4, which so as aforesaid remained unpaid, became due and payable, nor has not had at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said principal on said installments of interest, or any, or either of them, or any part thereof, or of any or either of them, could or would have been paid, had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 4, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and said several installments of interest monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 4, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

11 And for a further and fifth cause of action plaintiff further says that heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty

years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners should hold the said office of commissioners until the then next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys nor to issue bonds for the payment thereof until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hun-

dred and fifty-two. And thereupon afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town-meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered five in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 5 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York; the principal to be paid at the same place at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners, at the same time of the execution of said bond, also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond
12 until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof at the said Bank of the State of New York, in the said city of New York.

And afterwards, and before said bond No. 5 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 5 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 5 as afore said, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 5, with the coupons for said interest, as above mentioned, thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid

borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bond from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were from time to time, as the same were paid, detached from said bond and cancelled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 5, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon or by virtue thereof, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars, being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not at the time the principal and the said several installments of interest upon said bond No. 5, which so as aforesaid remained unpaid, became due and payable, nor has not had at any time since at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said principal or said installments of interest, or any, or either of them, or any part thereof, or of any or either of them, could or would have been paid, had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said principal or said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 5, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and said several installments of interest monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond

No. 5, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

13 And for a further and sixth cause of action, plaintiff further says that heretofore, to wit, on the sixteenth day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners, to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners, should hold the said office of commissioners until the then next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprise two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad

passing through the said city of Auburn and the said town of Venice, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town-meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory, or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered fifteen in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 15 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York; the principal to be paid at the same place at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners at the same time of the execution of said bond also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable,
14 which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof, at the said Bank of the State of New York, in the said city of New York.

And afterwards, and before said bond No. 15 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 15 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as

such, afterwards, and after the execution of said bond No. 15 as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 15, with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby then and there became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bond, from time to time as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were, from time to time, as the same were paid, detached from said bond and cancelled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in the State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 15, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon or by virtue thereof, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars; being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not at the time the said principal and the several installments of interest upon said bond No. 15, which so as aforesaid remained unpaid became due and payable, nor has not had at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said principal and said installments of interest, or any or either of them, or any part thereof, or of any or either of them, could or would have been paid,

had a demand thereof been made when and as the same became due and payable as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Venice has hitherto wholly refused and still does refuse to pay the said principal and said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 15, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and said several installments of interest monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 15, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

15 And for a further and seventh cause of action said plaintiff further says that heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow, on the faith and credit of such town, such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners, should hold the said office of commissioners until the then next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys nor to issue bonds for the payment thereof until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city

of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga, before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures duly executed a certain writing obligatory or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered eighteen in the series of bonds executed under and in virtue of the provisions of said act; whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 18 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bonds attached, at the Bank of the State of New York, in the city of New York; the principal to be paid at the same place at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners, at the same time of the execution of said bond, also executed under their official signatures coupons for each and every installment of semi-au-

nual interest which would become due and payable upon said bond
16 until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof, at the said Bank of the State of New York, in the said city of New York.

And afterwards, and before said bond No. 18 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 18 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 18, as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed, as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 18, with the coupons for said interest, as above mentioned, thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby then and there became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And whereas the said town of Venice paid all installments of interest upon said bond, from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July one thousand eight hundred and fifty-six, and the coupons were, from time to time, as the same were paid, detached from said bond and cancelled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in the said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 18, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain, in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should there-

after become due and payable thereon, or by virtue thereof, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars; being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not, at the time the said principal and said several installments of interest upon said bond No. 18, which so as aforesaid remained unpaid, became due and payable, nor has not had, at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said principal and said installments of interest, or any, or either of them, or any part thereof, or of any or either of them, could or would have been paid, had a demand thereof been made when and as the same become due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said principal or said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 18, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and said several installments of interest monies herein in this count above mentioned being and remaining due and wholly unpaid an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 18, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

17 And for a further and eighth cause of action, said plaintiff further says that heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legistature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners, to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums, and at such times and place, as should be agreed upon and expressed in the bonds which should be

duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners should hold the said office of commissioners until the then next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn, and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money, and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town at the town meeting next preceding the said second day of March, one thousand

eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered nineteen in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe, and promised to pay to the bearer of said bond No. 19, the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the bank of the State of New York, in the city of New York; the principal to be paid at the same place, at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners at the same time of the execution of said bond also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof, at the said Bank of the State of New York, in the said city of New York.

18

And afterwards, and before said bond No. 19 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 19 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in the said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 19, as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed, as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 19, with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon

said bond, from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were, from time to time, as the same were paid, detached from said bond and cancelled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in the said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 19, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon, or by virtue thereof, when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars, being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice, had not, at the time the said principal and said several installments of interest upon said bond No. 19, which so as aforesaid remained unpaid, became due and payable, nor has not had, at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the said principal and said installments of interest, or any or either of them, or any part thereof, or of any or either of them could or would have been paid, had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do the said town of has hitherto wholly refused and still does refuse to pay the said principal or said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 19, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal or said several installments of interest monies herein, in this court above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 19, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

19 And for a further and ninth cause of action, plaintiff further says that heretofore, to wit, on the 16th day of April, 1852, an act was

duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town, such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums and at such times and place as should be agreed upon and expressed in the bonds which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners, should hold the said office of commissioners until the then next annual town meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners to be called "railroad commissioners," to act in conjunction with the supervisors in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad, or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town, as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money, and the issuing of the bonds

for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga, before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town, at the town meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures duly executed a certain writing obligatory or bond of said town of Venice, bearing date the said second day of March, one thousand eight hundred and fifty-three, and numbered twenty in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 20 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York; the principal to be paid at the same place, at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners at the same time of the execution of said bond also executed, under their official signatures, coupons for each and every installment of semi-annual interest which would become due and payable upon said bond until the principal thereof should become due and payable, which said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof at the said Bank of the State of New York in the said city of New York.

And afterwards, and before said bond No. 20 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 20 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And whereas the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 20, as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor

and railroad commissioners thereto attached, as required by said act, had been filed, as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with the interest thereon at the rate of seven per cent.. payable semi-annually, delivered the said bond No. , with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby, then and there, became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bond from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were, from time to time, as the same were paid, detached from said bond and cancelled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls in said State of Iowa he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 20, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is, entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon, or by virtue thereof, when and as the same should thereafter become due and payable, according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars, being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said the town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said the town of Venice had not, at the time the principal and several installments of interest upon said bond No. 20 which so as aforesaid remained unpaid, became due and payable, nor has not had at any time since, at the said the Bank of the State of New York, or elsewhere, any money or means whereby the principal and said installments of interest, or any or either of them, or any part thereof, or of any or either of them could or would have been paid, had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Vence has hitherto wholly refused, and still does refuse, to pay the said interest on

said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 20, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and said several installments of interest monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 20, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned.

21 And for a further and tenth cause of action, the said plaintiff further says that heretofore, to wit, on the 16th day of April, 1852, an act was duly passed by the legislature of the State of New York, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York and Erie or Cayuga and Susquehanna Railroad," whereby it was, amongst other things, enacted that it should be lawful for the supervisor of any town in the county of Cayuga, and the assessors of such town, who were appointed by said act as commissioners to act in conjunction with the supervisor in effecting and executing the purposes of said act, to borrow on the faith and credit of such town such a sum of money as they might deem necessary, not to exceed twenty-five thousand dollars, for a term of time not exceeding twenty years, with such rate of interest as might be agreed upon, not exceeding seven per cent. per annum, and to execute therefor, under their official signatures, a bond or bonds, on which the interest should be made payable annually or semi-annually during the term for which said money should be borrowed, and the principal and interest of which loan should be made payable in such sums, and at such times and place, as should be agreed upon and expressed in the bonds which should be duly executed under the authority of said act. And wherein and whereby it was further enacted that the said assessors who were so as aforesaid appointed to act as such commissioners should hold the said office of commissioners until the then next annual town-meeting of their town, when it should be the duty of the electors of said town to elect by ballot, in the same manner as town officers were then elected, two commissioners, to be called "railroad commissioners," to act in conjunction with the supervisor in carrying into effect the provisions of said act.

And wherein and whereby it was further provided that the action of a majority of such supervisor and commissioners should at all times be sufficient for carrying into effect the provisions of said act. And wherein and whereby it was further provided that the said supervisor and commissioners should have no power to borrow said moneys, nor to issue bonds for the payment thereof, until a railroad company should have been duly organized, according to the requirements of the general railroad law, for the purpose of constructing a railroad passing through the city of Auburn, and connecting Lake Ontario with the Susquehannah and Cayuga Railroad or the New York and Erie Railroad, and the written assent of two-thirds of the resident persons taxed in said town,

as appearing on the assessment-roll of said town made next previous to the time such money might be borrowed, should have been obtained by such supervisor and commissioners, or some one or more of them, and filed in the clerk's office of Cayuga County, together with the affidavit of such supervisor and commissioners, or of any two of them, attached to said assent, to the effect that the persons whose written assents were thereto attached and filed as aforesaid comprised two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto.

That a railroad company, to wit, the Lake Ontario, Auburn and New York Railroad Company, was afterwards duly organized, to wit, on the 23d day of August, 1852, according to the provisions of the general railroad law of the State of New York, for the purpose of constructing a railroad passing through the said city of Auburn and the said town of Venice and connecting Lake Ontario with the Susquehannah and Cayuga Railroad.

That the written assent of two-thirds of the resident persons taxed in said town, as appeared on the assessment-roll thereof next previous to the time of the borrowing of the money and the issuing of the bonds for the payment thereof by the supervisor and commissioners of said town, as is hereinafter mentioned, was obtained by said supervisor and commissioners, and the same, together with the affidavit of said supervisor and commissioners of said town, thereto attached, to the effect that the persons whose written assents were thereto attached comprised two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the making of said affidavit, were duly filed by said supervisor and commissioners in the clerk's office of said county of Cayuga, before the borrowing of any money or the execution of any bonds for the payment thereof by said supervisor and commissioners, to wit, on the third day of November, one thousand eight hundred and fifty-two. And thereupon, afterwards, to wit, on the second day of March, one thousand eight hundred and fifty-three, Calvin King, who was then the supervisor of said town of Venice, and Jonas Wood and Isaac Smith, who were then the railroad commissioners of said town, duly elected by the electors of said town, at the town meeting next preceding the said second day of March, one thousand eight hundred and fifty-three, in the same manner as other town officers of said town were then required by law to be elected, under their several official signatures, duly executed a certain writing obligatory or bond of said town of Venice, bearing date the second day of March, one thousand eight hundred and fifty-three, and numbered twenty-one in the series of bonds executed under and in virtue of the provisions of said act, whereby the said town of Venice, in pursuance of said act of the legislature of the State of New York, acknowledged itself to owe and promised to pay to the bearer of said bond No. 21 the sum of one thousand dollars, with interest thereon at the rate of seven per cent. per annum, the same payable semi-annually, on the first day of January and the first day of July in each year, on surrender of the coupons to said bond attached, at the Bank of the State of New York, in the city of New York, the principal to be paid at the same place, at the expiration of twenty years from the date thereof.

And the said above-named supervisor and railroad commissioners, at the same time of the execution of said bond, also executed under their official signatures coupons for each and every installment of semi-annual interest which would become due and payable upon said bond
22 until the principal thereof should become due and payable, which

said coupons were annexed or attached to said bond, and were each made payable to the bearer thereof, at the said Bank of the State of New York, in the said city of New York.

And afterwards, and before said bond No. 21 had been negotiated or delivered by said town to any person, to wit, on the sixteenth day of May, one thousand eight hundred and fifty-three, the then clerk of said county of Cayuga, at the request of the said town, made and endorsed upon said bond No. 21 his certificate in writing, duly signed by him in his official character as such clerk, whereby he, the said clerk, under his official signature, certified that a paper purporting to be the written assent of two-thirds of the resident tax-payers of said town, with the affidavit required by section one of the act above referred to, had been filed in said clerk's office.

And the said supervisor and railroad commissioners, and acting as such, afterwards, and after the execution of said bond No. 21, as aforesaid, and after the organization of said railroad company as aforesaid, and after the written assent of two-thirds of the resident persons taxed in said town, as appearing on the last assessment-roll, had been obtained, and, together with the affidavit of the said supervisor and railroad commissioners thereto attached, as required by said act, had been filed, as aforesaid, to wit, on the said second day of March, one thousand eight hundred and fifty-three, at the said town of Venice, in the said county of Cayuga, borrowed, on the faith and credit of said town, of some person whose name is unknown to this plaintiff, the sum of one thousand dollars, for the purpose, and in accordance with the provisions, and in virtue of said act of the legislature of the State of New York; and to secure the payment thereof, with interest thereon at the rate of seven per cent., payable semi-annually, delivered the said bond No. 21, with the coupons for said interest as above mentioned thereto attached, and the said official certificate of said clerk of said county of Cayuga thereon endorsed, to the said person of whom said money was so as aforesaid borrowed, who thereby then and there became and was the owner, holder, and bearer thereof, and entitled to demand, collect, and have all the principal and interest monies which should thereafter become due and payable thereon, and to sell and transfer the same by delivery.

And the said town of Venice paid all installments of interest upon said bond, from time to time, as the same became due and payable, up to and including the installment thereof which became due and payable on the first day of July, one thousand eight hundred and fifty-six, and the coupons were, from time to time, as the same were paid, detached from said bond and canceled.

And afterwards, to wit, on the first day of August, one thousand eight hundred and sixty-seven, at Cedar Falls, in said State of Iowa, he, the said plaintiff, for a valuable consideration then paid by him therefor, purchased, and then and there became, and has ever since continued to be, and now is, the owner, holder, and bearer of said bond No. 21, together with the principal and interest remaining unpaid thereon, and said bond, together with the coupons for the unpaid interest due and to grow due thereon, and thereto attached, were thereupon then and there delivered to him, the said plaintiff, and the same have ever since continued and remained, and still remain in his possession as such owner, holder, and bearer thereof, and he, the said plaintiff, thereby became and was, and still is entitled to demand, have, and receive all the monies then due and remaining unpaid thereon, and also all monies which should thereafter become due and payable thereon, or by virtue thereof,

when and as the same should thereafter become due and payable according to the terms and conditions thereof.

And the said plaintiff avers that there is now actually due and payable from the said town of Venice to him, the said plaintiff, the sum of three thousand dollars; being the principal and interest monies which have accrued thereon from the said first day of July, one thousand eight hundred and fifty-six, no part thereof having ever been paid by the said The Town of Venice to any owner, holder, or bearer of said bond.

And the said plaintiff further avers that the said The Town of Venice had not, at the time the said principal and said several installments of interest upon said bond No. 21 which so as aforesaid remained unpaid became due and payable, nor has not had, at any time since, at the said The Bank of the State of New York, or elsewhere, any money or means whereby the said principal and said installments of interest, or any or either of them, or any part thereof, or of any or either of them could or would have been paid, had a demand thereof been made when and as the same became due and payable, as provided in and by the terms of said bond and said coupons; and although often requested so to do, the said town of Venice has hitherto wholly refused, and still does refuse, to pay the said principal or said several installments so as aforesaid remaining due and payable and unpaid upon said bond No. 21, or any or either of them, or any part thereof, or of any or either of them.

And the said plaintiff brings into court here the coupons attached to said bond for the said installments for interest-monies which have so as aforesaid become due and payable upon said bond, that the same may be detached from said bond and cancelled, whereby and by reason of the said principal and said several installments of interest-monies herein, in this count above mentioned, being and remaining due and wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said town of Venice the said sum of three thousand dollars, being the aggregate of the said principal and said several installments of interest so as aforesaid remaining due and unpaid upon said bond No. 21, together with interest upon said several installments from the time the same severally became due and payable, as in this count above mentioned, whereof the said plaintiff demands judgment against said defendant for the said ten several sums of one thousand dollars each of principal, together with the interest thereon, from the said first day of July, one thousand eight hundred and fifty-six, and the interest upon the said several coupons from the time the moneys therein severally mentioned severally became due, amounting in the aggregate to the sum of thirty thousand dollars, with the costs and disburs'ments of this action.

D. WRIGHT, *Plff.'s Atty.*

(Endorsed:) C. C. U. S., N. D. of N. Y. Evander Murdock vs. The Town of Venice. Declaration & complaint. D. Wright, plff.'s atty., Auburn, N. Y. Filed April 26, 1873.

23 And afterwards, to wit, on the 9th day of May, 1873, the said defendant appeared in said action, by Warren A. Worden, its attorney, and filed its answer to the said declaration or complaint of the said plaintiff; which said answer was and is in the words and figures following, to wit:

24 United States circuit court for the northern district of New York.

EVANDER MURDOCK
agst.
THE TOWN OF VENICE.

And the said defendant, The Town of Venice above named, by Warren A. Worden, its attorney, comes and defends this action, and says that it denies the whole of the said plaintiff's complaint or declaration herein, and each and every allegation therein contained, except that it admits the passage, on the 16th day of April, 1852, by the legislature of the State of New York, of the act mentioned and referred to in said complaint. It also admits the formation of the railroad company mentioned and referred to in said complaint. It also admits that the said town of Venice is one of the towns of Cayuga County, but denies that it is a municipal corporation for the purpose, among other things, of suing or being sued in this court, upon contracts, and says that it is not a citizen, and that this court has no jurisdiction over it, or of the subject-matter of this suit.

Second. And for a further and second defence herein the said defendant says that the said plaintiff ought not to have
25 or maintain this action against this defendant to recover the said several sums of money alleged in said complaint or declaration to have accrued by way of interest upon said alleged bonds and coupons in said complaint mentioned *by way of interest upon said alleged bonds and coupons in said complaint mentioned*, on or prior to the first day of January, eighteen hundred and sixty-seven, because it says that the same did not, nor did any or either of them, or any part or portion thereof accrue or become due & payable within six years next before the commencement of this suit, and as to the remaining portion of said several sums of money in said complaint or declaration mentioned, the said defendant says it does not owe the same, or any or either of them, or any part or portion thereof either in manner & form as is stated and set forth in the said plaintiff's complaint or otherwise.

Third. And for a further and third defence herein, the said defendant says that the said plaintiff ought not to have or maintain this their aforesaid action thereof against the defendant, because it says that the several supposed causes of action in the said plaintiff's complaint mentioned did not, nor did any or either of them, accrue to the said
26 plaintiff at any time within six years before the commencement of this suit in manner and form as the said plaintiff has above thereof complained against this defendant or otherwise.

Fourth. And for a further and fourth defence herein, the said defendant says that the said plaintiff ought not to have or maintain this action herein against this defendant, because it says that the said several supposed bonds and coupons in said complaint mentioned and referred to are not, nor are any or either of them, the deed, obligation, promise, or undertaking of this defendant in any way or manner, or for any cause or purpose whatsoever.

Fifth. And for a further and fifth defence and answer herein, this defendant says that the said plaintiff ought not to have or maintain this action herein against this defendant, because it says that the supervisor and assessors of the said town of Venice in office when said act of the legislature of the State of New York in said complaint mentioned was passed and became a law, did not, nor did any or either of them, or any

officer or officers of said town, or any other person or persons whomsoever, ever obtain or file in the clerk's office of Cayuga County the
27 written assent of two-thirds of the resident tax-payers of said town, as appeared in any assessment-roll of said town whatsoever, as required by said act; and that the said town of Venice never was authorized or empowered in any way or manner, or for any cause or purpose whatsoever, nor was any person or persons, officer or officers of said town or otherwise ever authorized or empowered in any way or manner whatsoever, or for any cause or purpose whatsoever, to borrow any money, or to execute or deliver for said town of Venice the said several bonds and coupons in said complaint mentioned, or any or either of them, in any way or for any cause or purpose whatsoever; and that the said several bonds and coupons are illegal and void and of no force or effect whatsoever, and impose no obligation on or by the said town of Venice in any way or for any cause whatsoever.

Sixth. And for a further and sixth defence and answer herein, this defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because it says that the supervisor and assessors of said town of Venice in office when said act of the legislature of the State of New York in said complaint or declaration
28 mentioned and referred to, was passed and became a law, did not, nor did any or either of them, or any officer or officers of said town, or any other person or persons whomsoever, ever make or file in the office of the clerk of Cayuga County any affidavit to the effect that the persons whose written assent are thereto attached and filed as aforesaid, to wit, in the office of said clerk, compose two-thirds of all the resident tax-payers of said town on its assessment-roll next previous thereto, as required by said act, and that therefore the said town of Venice never was authorized or empowered, nor was any person or persons, officer or officers, ever authorized or empowered to borrow any money on the faith and credit of said town, or on the faith and credit of said bonds and coupons in said complaint mentioned, in any way whatsoever, or to execute or deliver said bonds and coupons in said declaration or complaint mentioned and referred to, or any or either of them, and that the same are therefore illegal and void.

Seventh. And for a further and seventh defence and answer herein, this defendant says that the said plaintiff ought not to have or
29 maintain this action herein against this defendant, the said town of Venice, because it says that the said Calvin King, Jonas Wood, and Isaac Smith, in said complaint mentioned, never were, nor were any or either of them ever the agents of the said town for the purpose of executing or delivering for said defendant the said several supposed bonds and coupons in said complaint mentioned, or any or either of them, in any way, or for any cause or purpose whatsoever; nor had they or any or either of them any authority or power in any way, or for any cause or purpose whatsoever, to execute or deliver for said town the said several supposed bonds and coupons in said complaint mentioned, or any or either of them.

Eighth. And for a further and eighth defence and answer herein, this defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because it says that the first instalment of interest secured and agreed to be paid in & by said supposed bonds in said complaint mentioned, and each and every one of them, is made payable within a term less than six months from the date of them, and each of them, to wit, within the term of three months and
30 twenty-eight days from the date of them and each of them; and

that the interest secured to be paid in and by said bonds, and each of them, exceed' the sum of seven per cent. per annum.

Ninth. And for a further and ninth defence and answer herein, this defendant says that the said plaintiff ought not to have or maintain this action against this defendant, because it says that the said several supposed bonds and coupons in said complaint mentioned were not, nor were any or either of them, ever executed or delivered for any money borrowed or agreed to be borrowed on the faith and credit of said town of Venice, but, on the contrary thereof, this defendant says that the said supposed bonds and coupons, & each & every one of them, were delivered to the said Lake Ontario, Auburn & New York Railroad Company, mentioned & referred to in said complaint, for stock in said road, and not for money borrowed or agreed to be borrowed, and which was the first and only delivery of said bonds and coupons as in any way or
31 for any cause or purpose whatsoever, and that such negotiation and delivery was without authority and unauthorized, and was and is illegal and void, and in violation of the requirements & conditions of said act of the legislature of the State of New York, above mentioned and referred to; that from and after that time the same remained in the sole & only possession and control of the said railroad company, or its assigns, the said town or any officer thereof never having repossessed itself or themselves of the same in any way or for any cause whatsoever; and that at the time when the said plaintiff became the owner & holder and bearer of the said bonds and coupons there was due and unpaid on each of said alleged bonds, with the coupons which were attached to the same respectively, a large sum of money, to wit, the sum of eight hundred dollars, or thereabouts, for interest then due & unpaid on said bonds and coupons; and that the said plaintiff at the time when he became such owner, holder, and bearer of said bonds and coupons well knew that such interest was due and unpaid on the same respectively; and that the said plaintiff became such owner, holder, & bearer of said
32 bonds and coupons respectively, not in the ordinary course of business, & without such knowledge as aforesaid, and without paying a bona-fide and valuable consideration for the same, and with full knowledge of the original delivery of them to the said railroad company as aforesaid; and that the said plaintiff is not a bona-fide holder or bearer of them or any or either of them for a valuable consideration paid by him, and in the ordinary course of business. Wherefore the said defendant demands judgment herein, & that the said plaintiff's complaint or declaration herein be dismissed with costs, &c.

WARREN A. WORDEN,
Deft.'s Atty., Auburn, N. Y.

WARREN T. WARDEN,
Of Counsel for said Defendant.

(Endorsed:) United States circuit court northern district of New York. Evander Murdock ag'nst The Town of Venice. Defendant's answer. Warren A. Worden, deft.'s attorney, Auburn, N. Y. Filed May 9th, 1873.

33 And thereupon the issue above joined came on to be tried at the June term of said court, held at the village of Canandaigua, on the 19th day of June, A. D. 1873, before the honorable Ward Hunt, justice, and a jury, at which day and place last aforesaid came the parties aforesaid, by their attorneys aforesaid, and the jurors, of the jury summoned to try the said issue being empannelled and sworn, after hearing the evidence offered in said cause, say, upon their oath, that the

said defendant is guilty of the premises above laid to its charge, in manner and form as the said plaintiff hath above complained against it; and they assess the damages of said plaintiff by reason of the premises, over and above his costs and charges by him about his suit in this behalf expended, to fifteen thousand six hundred and twenty-six dollars.

34 At a stated term of the circuit court of the United States of America for the northern district of New York, in the second circuit, held at the village of Canandaigua, on Thursday, the 19th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Present, the honorable Ward Hunt, justice.

EVANDER MURDOCK
vs.
THE TOWN OF VENICE.

On motion of Warren T. Worden, counsel for defendant, ordered that the defendant have sixty days in which to make and serve a bill of exceptions, and that the plaintiff have the same time to prepare amendments thereto, and that in the meantime all other proceedings be stayed.

35 Therefore it is considered that the said plaintiff, Evander Murdock, do recover against the said defendant, The Town of Venice, his said damages by the jurors aforesaid in form aforesaid assessed, and also three hundred and thirty-four dollars and thirty-four cents for his costs and charges by the court here adjudged of increase to the said plaintiff with his assent; which said damages, costs, and charges in the whole amount to fifteen thousand nine hundred and sixty dollars and thirty-four cents.

And said defendant in mercy, &c.

Judgment signed this 15th day of September, A. D. 1873.

CHARLES MASON, *Clerk.*

(Endorsed:) U. S. circuit court, north. dist. of N. Y. Evander Murdock vs. The Town of Venice. Judgment record. David Wright, plff.'s atty. Damages, $15,626.00; costs, 334.34—$15,960.34. Filed September 15, 1873, 5 o'clock, p. m.

36 *Bill fo exceptions on behalf of defdt.*

Circuit court of the United States, second circuit, northern dist. of New York

THE TOWN OF VENICE
ads.
EVANDER MURDOCK.

Afterwards, to wit, at a circuit court held at the village of Canandaigua, in and for the northern district of New York, on the seventeenth day of June, one thousand eight hundred and seventy-three, by and before the Hon. Ward Hunt, associate justice of the Supreme Court of the United States, came the parties aforesaid, by their attorneys aforesaid, as also by their respective counsel, and the issues thus joined came on to be tried by and before said judge and a jury; and the said plaintiff, in order to maintain the issues on his part, introduced and read in evidence the act of the legislature of the State of New York, entitled

"An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads from Lake Ontario to the New York & Erie or Cayuga and Susque-
37 hannah Railroad, passed April 16, 1852." The plaintiff then produced and read in evidence a certified copy of the articles of incorporation of the Lake Ontario, Auburn & New York Railroad Company, mentioned and referred to in the pleadings in the cause, which articles of association provided for the construction and operation of a railroad from some point on Little Sodus Bay, in the county of Cayuga, and State of New York, passing through the towns of Stirling, Victory, city of Auburn, and towns of Fleming, Scipio, Venice, and Genoa, in said county of Cayuga, and into the county of Tompkins, in said State of New York, to a point on the Cayuga & Susquehannah Railroad, in said county of Tompkins, about seven miles from Ithaca. The said plaintiff then produced the said ten several alleged bonds and coupons and clerk's certificate, mentioned and referred to in the complaint in this cause, and offered to prove that the signatures to the same were genuine, and that the said Calvin King was elected supervisor and the said Jonas Wood and Isaac Smith railroad commissioners on the first day of March, eighteen hundred and fifty-three; that being the day appointed by law for holding the town meetings for the election of town
38 officers in that year; and to the proving of which the counsel for said defendant made severally and seperately the same objections which he made to the reading of said several bonds and coupons in evidence as is hereinafter stated and set forth, and which said several objections his honor the judge severally and seperately overruled; and to which said several and seperate rulings the counsel for said defendant then and there severally and seperately excepted, and the same were then and there severally and seperately noted.

The counsel for said plaintiff then proved said signatures to be genuine, & that the said King was elected supervisor & the said Wood & Smith railroad commissioners, at said town meeting, held in and for said town of Venice on the said first day of March, eighteen hundred and fifty-three. The counsel for said plaintiff then offered to read the said certificate of the clerk of Cayuga County in evidence, which certificate, under the hand of said clerk, was endorsed on each of said bonds, and to which the counsel for said defendant then and there objected,
39 because there was no statute or rule of law of said State authorizing or empowering the clerk to make any such certificate. His honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The said certificate was then read in evidence in the words and figures following, to wit:

"CAYUGA COUNTY CLERK'S OFFICE.

"I, Edwin B. Marvine, clerk of the county of Cayuga, hereby certify that a paper purporting to be the written assent of two-thirds of the resident tax-payers of the town of Venice, with the affidavit required by sec. 1 of the act referred to by its title in the foregoing bond, has been filed in this office.

"Dated Auburn, May 16th, 1853.

(Signed) "E. B. MARVINE,
Clerk of Cayuga County."

The counsel for said plaintiff then called as a witness one Lyman C. Comstock, who, being duly sworn, testified as follows: I am clerk of

Cayuga County. I have with me, from the files of said office, the assents and affidavit annexed in the case of The Town of Venice. They were filed in said office on the third day of November, eighteen hundred and fifty-two, and on which there are two hundred and fifty-nine
40 names in the aggregate signed to said assents, and of which the following is a copy, viz: "We, the undersigned, resident tax-payers of the town of Venice, in the county of Cayuga, do hereby consent that the supervisor and assessors of said town may borrow, on the faith and credit of said town, such a sum of money as they may deem necessary, not exceeding twenty-five thousand dollars, for a term not exceeding twenty years, at such rate of interest as may be agreed upon not exceeding seven per cent. per annum; and to execute therefor, under their official signature, a bond or bonds, in which the interest shall be made payable annually or semi-annually during the time said money may be borrowed, and the principal and interest made payable in such sums, and at such times and places, as shall be agreed upon and expressed in the bonds to be executed; and that the monies so borrowed may be paid to the president and directors of a railroad company organized according to the requirements of the general railroad-law, for the purpose of constructing a railroad connecting Lake Ontario with the Susquehannah and Cayuga Railroad, passing through the city of Auburn, upon the stock of said railroad company, to be subscribed for and
41 taken by said supervisor and assessors in the name of said town."

Then is endorsed in said assents an affidavit, of which the following is a copy, to wit:

"STATE OF NEW YORK,
"*Cayuga County, ss:*

"Luke H. Mills, supervisor of the town of Venice, in said county, and William Jones, on' of the assessors of said town, being duly sworn, depose and say, and each for himself says, that the persons whose names are subscribed to the several foregoing written assents hereto attached comprise two-thirds of all the resident tax-payers of said town of Venice on its assessment-roll next previous to the date hereof.

"Dated October 30th, 1852.

"LUKE H. MILLS, *Supervisor.*
"WILLIAM JONES, *Assessor.*

"Subscribed and sworn to before me this 30th day of October, 1852.
"LYMAN MURDOCK,
"*Justice of the Peace in said County.*"

And the said counsel for said plaintiff then offered to read said assents and said affidavit in evidence, and to which the counsel for said defend-
ant objected, on the ground that said plaintiff must first prove
42 that the signatures to said assents are the genuine signatures of those whose names purport to be signed to the same; and which objection was then and there overruled by said court; and to which ruling and decision the counsel for said defendant then and there, in due time and form, excepted, and the same was then and there duly noted by said court; and the said assents and the headings thereto, and the said affidavit, was then and there read in evidence by said counsel for said plaintiff.

The counsel for said defendant also and in due time objected to the reading of the affidavit in evidence on the ground that the same was not legitimate proof in the cause, and also because the word filed

was not in said affidavit, the said affidavit not averring that the assents thereto, attached and filed as aforesaid, comprise two-thirds of the resident tax-payers of said town as appeared on any assessment-roll of said town, as required by said statute; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted by the said court.

43 The counsel for said plaintiff then offered to read in evidence the said several bonds with the coupons thereto attached as mentioned & referred to in said complaint, and to which the counsel for the defendant objected, and contended that the alleged bonds having been issued under a special statute, and that statute having pointed out and provided the mode and manner by which the money should be raised with which to pay them, that said statute formed a part and portion of the alleged bonds as much so as if the same was incorporated in them, and that the payment of the same must be enforced in the mode and manner pointed out by the statute, and that this action could not be maintained. His honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for the defendant then and there objected to the reading of said bonds and coupons in evidence unless it was proved that the signatures to said alleged assents of the alleged tax-payers of said

44 town, as filed in said clerk's office of Cayuga County, were genuine, and in fact signed by the persons whose names were attached to the same, and that the same could not be thus proved by said affidavit; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there in due time and manner excepted, and the same was then and there duly noted by the said court.

The counsel for said defendant then and there objected to the reading of said bonds and coupons in evidence because the said affidavit did not conform to the requirements of the statute as above mentioned; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then and there contended and insisted that until the genuine'ss of the signatures to said alleged assents were proved in som' way other than by said affidavit, there was no legitimate evidence that the said Calvin King, Jonas Wood, and Isaac Smith had any power or authority to execute or deliver said alleged bonds,

45 or do anything under said act; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then & there excepted, and the same was then & there duly noted by said court.

The counsel for said defendant then objected to the reading of said bonds and coupons in evidence, and contended & insisted that the said Calvin King, Jonas Wood, and Isaac Smith could not become the agents of said town under said act for the purpose of executing and delivering said alleged bonds prior to the obtaining and filing of the assents as required by said act, and until after such assents had been obtained and filed as aforesaid, and that said plaintiff was bound to prove in some way other than by the production of said affidavit by the clerk of Cayuga County from the files of said office that the signatures to said assents were genuine & signed, or authorized to be signed, by the persons whose names appear to be thereto attached; but his honor the

judge decided otherwise, and overruled said objection; and to which ruling and decision the counsel for said defendant then and there
46 in due time excepted, and said exception was then and there duly noted by the court.

The counsel for said defendant also then and there contended and insisted that the recitals in said alleged bonds, or in the testatum clause to said bond, were not evidence that the prior conditions required by said act to the issuing of said bonds had been complied with; that the right, power, and authority of said Calvin King, Jonas Wood, and Isaac Smith to execute said alleged bonds could not be proved by the recitals in said bonds, or in said testatum clause to said bonds; that under the act in question they could not prove their own power and authority to execute or issue the same by recitals which they themselves should insert in the bonds or in said attestatum clause to the bonds which they themselves should execute, and if so, that the same were not sufficient for that purpose; but his honor the judge decided otherwise; and to which ruling and decision the counsel for said defendant then and there in due time and manner excepted, and the same was then & there duly noted by the court.

The counsel for said defendant then objected to the reading of
47 the said alleged bonds in evidence because, by the terms of said bonds, the first instalment or payment of interest was made payable in a less term than six months after the date of said bonds, to wit, on the first day of July thereafter, and that, therefore, they did not conform to the requirements and conditions of said act, and were, therefore, not such bonds as were authorized by the act in question; but his honor the judge overruled said objection, and decided that said bonds were in conformity with the requirements and conditions of the statute in question; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then objected to the reading of the said several bonds and coupons in evidence, because that by making seven per cent. interest payable every six months, the interest secured to be paid in and by the same, exceeded seven per cent. per annum; but his honor the judge overruled said objection; and to which ruling and decision the counsel for the defendant then and there excepted, and
48 the same was then and there noted.

The counsel for said defendant then objected to the reading of said alleged bonds and coupons in evidence, except bonds Nos. 1, 2, 3, 4, & 5, unless it was proved that they were executed and delivered for money borrowed; but his honor the judge overruled said objection; and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted. It was here admitted by the counsel for the defendant that bonds Nos. 1, 2, 3, 4, & 5 were sold by the said supervisor and railroad commissioners to Amos Hutchinson and Lyman Murdock at par & for cash.

The said several objections to the reading of said bonds and coupons in evidence having been overruled and excepted to as aforesaid, the counsel for said plaintiff then produced the said several bonds, with the several semi-annual interest-coupons thereto attached from July first, eighteen hundred and fifty-six, to January first, eighteen hundred and seventy-three, and the said several bonds were then read in evience, together with the interest-coupons which had become due
49 and payable within six years next previous to the commencement of this suit.

The plaintiff then offered to read in evidence the said interest-coupons which had become due and payable prior to that date, to wit, from the first day of July, eighteen hundred and fifty-six, up to and within six years next before the commencement of this suit, to which the counsel for said defendant objected, on the ground that, under the pleadings, the statute of limitations having been pleaded, the plaintiff was not entitled to recover interest beyond six years next prior to the time of the commencement of this suit. His honor the judge then and there decided that said coupons might be read, (and they were read,) but that under the plea of the statute of limitations but six years' interest could be recovered; to which ruling and decision the counsel for the plaintiffs then and there excepted, and the same was then and there noted.

The counsel for the said plaintiff then offered in evidence a stipulation signed by David Akins, supervisor of said town of Venice, of which Schedule C, hereunto annexed, is a copy. The counsel for the defendants admitted that the signature thereto was in the handwriting
50 of the said David Akins, and that he was the supervisor of said town of Venice at the date thereof; to which the counsel for the defendant objected, on the ground that the said supervisor had no power or authority to bind said town by any such stipulation or agreement. His honor the judge sustained said objection and excluded the proofs, and to which ruling and decision the counsel for said plaintiff then and there excepted, and the same was then and there noted.

The counsel for said plaintiff then contended that the said plaintiff had a right to recover interest upon each coupon to which the statute of limitations did not apply from the time when it became due up to the day of the trial of this suit, and to which the counsel for said defendant then and there objected, and contended that the said plaintiff could only recover simple interest, and could not compound the same by casting interest upon interest; but his honor the judge decided otherwise, and overruled said objection, and to which ruling and decision the counsel for said defendant, then and there excepted, and the same was then and there noted.

51 The said bonds were exact copies of each other except as to their numbers, one being numbered 1, and the others being numbered 2, 3, 4, 5, 15, 18, 19, 20, & 21, and a copy of one of which bonds is hereunto annexed, marked "Schedule A." The interest coupons were also exact copies of each other except as to the time of payment, and the numbers of the bonds to which they were attached, a copy of one of which said coupons is hereunto annexed, marked "Schedule B."

The counsel for said plaintiff then offered to prove the interest which had accrued upon each of said bonds cast at seven per cent. simple interest, from the first day of July, eighteen hundred and fifty-six (no interest being claimed prior to that date) to the time of trial, to which the counsel for the defendant objected, upon the ground that the plaintiff could not be allowed to recover for interest more than six years prior to the commencement of this action, and said court then & there so decided and refused to allow the proof thus offered to be made, to which ruling
52 and decision the counsel for said plaintiffs then and there in due time and form excepted, and said exception was then and there duly noted by said court.

The plaintiff then proved the interest and principal of said bonds according to the ruling aforesaid to be fifteen thousand six hundred and twenty-six dollars, and rested.

The counsel for the defendant then asked the court to rule and de-

cide that on the above proof the plaintiff was not entitled to recover; but his honor the judge declined so to rule or decide, but, on the contrary thereof, ruled and decided that on the facts as above proved, the plaintiff was entitled to recover, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted by the court.

The counsel for said defendant then offered to show that the bonds in suit were originally and in the first instance delivered to the said railroad company mentioned in the pleadings for stock, and not for money borrowed, except bonds number 1, 2, 3, 4, & 5, and to which the
53 counsel for said plaintiff then and there objected, and the court sustained said objection and excluded the testimony, to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there duly noted.

The said defendant then offered to show that Slocum Howland, esq., of Cayuga County, was the owner and holder of the bonds now in suit in eighteen hundred and fifty-four, except bonds number 1, 2, 3, 4, & 5, and continued to be such owner & holder of them until some time on or about the first day of September, eighteen hundred and sixty-seven, when he disposed of them, (but not to this plaintiff,) and to which the counsel for said plaintiff then and there objected, and his honor the judge excluded the evidence offered, and to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The said defendant then offered to prove that said Slocum Howland commenced an action against the said town of Venice in the supreme court of the State of New York, some time in the year eighteen
54 hundred & fifty-eight on said bonds so owned by him to recover the interest then due and unpaid upon the same, and which suit was discontinued after the decision of the court of appeals in case of Starin vs. The Town of Genoa, as reported in the 23d New York Reports, 439, and to which the counsel for said plaintiff then and there objected; and his honor the judge sustained the objection and excluded the proof offered, & to which ruling and decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then and there insisted and contended that the proofs thus offered, if admitted in evidence, would change the burden of proof and compel the plaintiff to prove that he was a bona-fide holder for value of the bonds so belong' to said Howland as aforesaid, and that under such proof and the circumstances of the case, the mere production of said bonds by him did not prove that fact; but his honor the judge decided otherwise, and to which ruling and
55 decision the counsel for said defendant then and there excepted, and the same was then and there noted.

The counsel for said defendant then offered to show that some of the signatures to said assents were not genuine and that others were duplicates, and that in point of fact the same never were signed by two-thirds of the resident tax-payers of said town as required by said act, and to which the counsel for said plaintiff objected, and his honor the judge, after expressing great doubts on the subject, concluded to and did exclude the evidence offered, and to which ruling and decision the counsel for said defendant then & there in due time and manner excepted, and the same was then and there duly noted by said court.

The counsel for said defendant then referred to the general statutes of the State of New York, under and by virtue of which it was claimed

that the said town of Venice was incorporated, and contended and insisted that the said town was not such a corporation as made it a
56 citizen of the State of New York, but was a part and portion of the machinery of the State government and not a citizen of the State, and that this court had no jurisdiction over it or in this matter; but his honor the judge decided otherwise, and to which ruling and decision of his honor the judge, the counsel for said defendant then & there excepted, and the same was then and there noted.

Here the testimony closed.

The counsel for said defendant then requested his honor the judge to charge the jury that on the above proofs the plaintiff was not entitled to recover. His honor the judge declined so to charge the jury, and to which refusal the counsel for said defendant then and there excepted, and the same was then and there noted by the court.

His honor the judge then charged the jury that the above proofs plaintiff was entitled to recover the principal secured to be paid by said several bonds, together with the interest thereon from the first day of January, eighteen hundred and seventy-three, to the time of
57 trial, together with the amounts specified in the several coupons which became due and payable within six years previous to the commencement of this suit, together with interest upon said several coupons from the times the monies thereon severally specified became due and payable to the time of trial. To which charge the counsel for said plaintiff then and there, in due time and manner, excepted, and requested the said court to charge said jury that said plaintiff was entitled to recover the principal monies secured by said several bonds, together with simple interest thereon from the first day of July, one thousand eight hundred and fifty-six, to the time of trial; but said court refused to charge as thus requested, or in anywise to alter or vary the charge as theretofore made and given as above mentioned, and to which charge, as given, and to said refusal to charge as requested, said counsel for said plaintiff then and there duly excepted, and said exception was then and there duly noted by said court.

The counsel for said defendant also then and there, and in due
58 time and manner, excepted to so much of said charge whereby the said judge charged the jury that the same plaintiff was entitled to recover the principal secured to be paid by said several bonds, together with the interest thereon, from the first day of January, one thousand eight hundred and seventy-three, to the time of trial, and which said exception was then and there duly noted by said court.

The counsel for said defendant also then and there, and in due time and manner, excepted to so much of said charge, whereby the said judge charged said jury that the said plaintiff was entitled to recover interest upon said several coupons from the time the monies thereon severally specified became due, and payable to the time of trial, and which said exception was then and there duly noted by said court.

The jury then, and under the direction of the court, as aforesaid, and without retiring from said court, found their verdict for the plaintiff for the sum of fifteen thousand six hundred and twenty-six dollars.

And because none of the exceptions, offers, and requests, and
59 exceptions so offered and made and excepted to, as aforesaid, to the rulings, opinions, and decisions of the said judge do appear upon the record of the said trial, therefore, on the prayer of the said defendant, by his counsel, his honor the judge hath to this bill of exceptions set his hand and seal, according to the statute and rules and

practice of this court in such case made and provided, this twelfth day of September, one thousand eight hundred and seventy-three.

[L. S.] WARD HUNT,
Asso. Just. Sup. Ct. U. S.

WARREN A. WORDEN,
Deft.'s Atty., Auburn, N. Y.
WARREN T. WORDEN,
of Counsel.

60 SCHEDULE A.

STATE OF NEW YORK, *County of Cayuga:*

No. 15.] Seven per cent. loan, not exceeding $25,000.

Be it known that the town of Venice, in the county of Cayuga and State of New York, in pursuance of an act of the legislature of the said State, entitled "An act to authorize any town in the county of Cayuga to borrow money for aiding in the construction of a railroad or railroads, from Lake Ontario to the New York and Erie, or Cayuga and Susquehannah Railroad," passed April 16th, 1852, and for the purpose of aiding the construction of the Lake Ontario, Auburn and New York Railroad, owes, and promises to pay, to ——— ———, or bearer, one thousand dollars, with interest at the rate of seven per cent., payable semi-annually, on the first days of January and July in each year, on surrender of the coupons hereto attached at the Bank of the State of New York,
in the city of New York, the principal to be re-imbursable at the
61 same place, at the expiration of twenty years from the first day of January, 1853.

In testimony whereof, the supervisor and commissioners of the town of Venice have, pursuant to the provisions of the act aforesaid and the written assent of two-thirds of the resident tax-payers of said town, obtained and filed in the office of the clerk of the county of Cayuga, hereunto subscribed their names, this second day of March, A. D. 1853.

CALVIN KING,
Supervisor.
JONAS WOOD,
ISAAC SMITH,
Commissioners.

SCHEDULE B.

$35.]

The town of Venice, in the county of Cayuga, hereby acknowledge that there will be due the bearer thirty-five dollars, payable at the Bank of the State of New York, in the city of New York, on the first day of January, 1856, being interest due on that day on bond number 15.

CALVIN KING,
Supervisor.
JONAS WOOD,
ISAAC SMITH,
Commissioners.

62 SCHEDULE C.

Circuit court U. S., N. D. of New York.

WILLIAM L. MATTSON
vs.
THE TOWN OF VENICE.

Whereas this action is now pending wherein the plaintiff is now seeking to recover the interest monies claimed to be due upon two certain

written instruments, which are claimed to have been issued by said town of Venice in virtue of the act of the legislature of the State of New York, passed April 16th, 1852; and whereas there are twenty-three other instruments in writing claimed to have been issued under said act and now in the hands of other parties, the interest-coupons upon which, or some of them, may become uncollectable by reason of the statute of limitations, if suits thereon be delayed; and whereas it is desired on the part of said town that no more suits be brought until the question of the validity of said bonds be finally determined:

63 Now, in consideration of the premises, it is hereby agreed by and on behalf of said town that the said town will not plead the statute of limitations or insist upon the same in any suit which may hereafter be brought upon any of said twenty-three bonds as to any coupons for interest accruing thereon, which at the date hereof are not now more than six years past due. This stipulation not to apply to the bonds now or formerly held by Lyman Murdock or Amos Hutchinson.

Auburn, June 17th, 1867.

(Signed) DAVID AKIN,
Supervisor of the Town of Venice.

(Endorsed:) Circuit court, United States, second circuit, northern dist. of New York. The Town of Venice ads. Evander Murdock. Bill of exceptions on part of defendant. Warren A. Worden, defts.' atty., Auburn, N. Y. Filed Sept. 12th, 1873.

64 UNITED STATES OF AMERICA,
Northern District of the State of New York, Cayuga Co, ss:

Sidney Mosher, being duly sworn, deposes and says for himself that he is a householder and freeholder resident within said county; that he is worth five thousand dollars above all debts and liabilities which he has incurred.

SIDNEY MOSHER.

Sworn and subscribed to before me this 16 Sept., 1873.
DEXTER WHEELER,
Justice Peace.

STATE OF NEW YORK,
Cayuga County, ss:

On this sixteenth day of September, 1873, personally appeared before me Rufus G. King, Patrick Hickey, Allen Butler, Thom. Beill, Charles Tupper, Simeon Snyder, Hugh Sheils, & Daniel Butler, to me personally known to be the same persons described in and who executed the annexed instrument or bond, and acknowledged the due execution of the same.
DEXTER WHEELER,
Justice Peace.

(Indorsed:) September 16, 1873.

65 STATE OF NEW YORK,
Cayuga County, ss:

On this seventeenth day of September, 1873, personally appeared before me Edward W. Stark, Alonzo Mason, Lorenzo Mason, George Coon, John Perry, Samuel J. Bates, James Starkweather, Austin N. Cook, Nathaniel Cook, James Standard, Benajah Mason, Charles Scammon, Elisha B. Cobb, Cyrenus Wheeler, to me personally known to be

the same persons herein described and who executed the annexed instrument or bond, and acknowledge the due execution of the same.

DEXTER WHEELER,
Justice Peace.

(Indorsed:) September 17, 1873.

66 Know all men by these presents that we, Sidney Mosher, John Barker, Charles Mosher, Dexter Wheeler, Charles Avery, Noble D. Tremain, James R. Tremain, Wm. Sprague, Rufus G. King, Patrick Hickey, Allen Butler, Alonzo Mason, George Coon, James Starkweather, Nathaniel Cook, Benajah Mason, Cyrenus Wheeler, Thorn Beill, Charles Tupper, Simeon Snyder, Hugh Sheils, Daniel Butler, Edward W. Stark, Lorenzo Mason, John Perry, Samúel Y. Bates, Austin N. Cook, James Standard, Charles Scammon, & Elisha B. Cobb, all of the town of Venice, in the county of Cayuga and State of New York, are held and firmly bound unto Evander Murdock in the penal sum of thirty-two thousand dollars, for which payment, well and truly to be made, we bind ourselves, our executors or administrators, & jointly and severally, firmly by these presents, sealed with our seals, dated this sixteenth day of September, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above-named town of Venice, in the county of Cayuga, and State of New York, is about to prosecute a writ of error from the Supreme Court of the United States, to reverse the judgment rendered by the circuit court of the United States for the second circuit & northern district of New York, in a certain action in which the said Evander Murdock was plaintiff and the said Town of Venice was
67 defendant, and in which said action a judgment has been rendered in said circuit court in favor of said plaintiff against the said town of Venice, for the sum of fifteen thousand nine hundred & sixty dollars & thirty-four cents, damages and costs, and the record thereof filed with the clerk of said circuit court, at his office in the city of Utica, on the fifteenth day of September, eighteen hundred and seventy-three:

Now, therefore, the condition of this obligation is such, that if the said town of Venice shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

DEXTER WHEELER.	(L. S.)	CYRENUS WHEELER.	(L. S.)
CHARLES AVERY.	(L. S.)	SIDNEY MOSHER.	(L. S.)
NOBLE D. TREMAIN.	(L. S.)	JOHN BARKER.	(L. S.)
JAMES R. TREMAIN.	(L. S.)	CHARLES MOSHER.	(L. S.)
WM. SPRAGUE.	(L. S.)	THORN BRILL.	(L. S.)
R. G. KING.	(L. S.)	CHARLES TUPPER.	(L. S.)
PATRICK HICKEY.	(L. S.)	SIMEON SNYDER.	(L. S.)
ALLEN BUTLER.	(L. S.)	HUGH SHEILS.	(L. S.)
ALONZA MASON.	(L. S.)	DANIEL BUTLER.	(L. S.)
GEORGE COON.	(L. S.)	EDWARD W. STARK.	(L. S.)
JAMES STARKWEATHER.	(L. S.)	LORENZO MASON.	(L. S.)
NATHANIEL COOK.	(L. S.)	JOHN PERRY.	(L. S.)
JAMES STANDARD.	(L. S.)	SAMUEL J. BATES.	(L. S.)
E. B. COBB.	(L. S.)	AUSTIN N. COOK.	(L. S.)
BENAJAH MASON.	(L. S.)	CHARLES SCAMMON.	(L. S.)

Sealed & delivered in the presence of.

68 STATE OF NEW YORK, CAYUGA COUNTY,
United States of America, Northern District of New York, ss:

On this 16 day of September, 1873, before me, the subscriber, personally appeared Dexter Wheeler, Noble Tremain, Charles Avery, James R. Tremain, Wm. Sprague, John Barker, & Charles Mosher, residents of the town of Venice, Cayuga Co., N. Y., and to me personally known to be the same persons described in and who executed the within instrument, and acknowledged that they executed the same.

[NOTARIAL SEAL.] SIDNEY MOSHER,
Notary Public, with seal.

UNITED STATES OF AMERICA,
Northern District of the State of New York, Cayuga County, ss:

On the 16th day of September, one thousand eight hundred and seventy-three, personally appeared before me, a notary public, Dexter Wheeler, Noble Tremain, Charles Avery, James R. Tremain, William Sprague, John Barker, & Charles Mosher, the sureties in the within annexed bond, and, being duly sworn, depose and say, and each for himself says, that he is a householder & freeholder, resident within said county & district, to wit, in the town of Venice aforesaid,
69 and that he is worth five thousand dollars over & above all his debts & liabilities which he has incurred.

DEXTER WHEELER.
CHARLES AVERY.
NOBLE D. TREMAIN.
JAMES R. TREMAIN.
WM. SPRAGUE.
JOHN BARKER.
CHARLES MOSHER.

Sworn & subscribed to before me this sixteenth day of September, 1873.

[NOTARIAL SEAL.] SIDNEY MOSHER,
Notary Public, with seal.

(Endorsed:) Town of Venice. Bond. Penalty, $32,000.00. Evander Murdock. Case.

I approve of the within bond as to its form & the sufficiency of the sureties to stay execution.

WARD HUNT.

Filed Sept. 22, 1873.

70 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the judges of the circuit court of the United States for the second circuit & northern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of judgment of a plea which is in the said circuit court & northern district of New York, before you, between Evander Murdock, plaintiff, and The Town of Venice, in the county of Cayuga, & State of New York, a manifest error hath happened, to the great damage of the said town of Venice, as by its complaint appears; we, being willing that the error, if any hath been, should be duly corrected, and full & speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Mon-

day of October next, in the said Supreme Court to be then & there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws & customs of the United States should be done.

Witness the Hon. Nathan Clifford, senior associate judge and acting Chief-Justice of the said Supreme Court, the 22d day of September, in the year of our Lord one thousand eight hundred & seventy-three.

CHARLES MASON,
Clerk of the circuit court of the United States for the northern district of New York.

Allowed by

WARD HUNT.

(Indorsed:) Supreme Court of the United States. The Town of Venice, plaintiffs in error, *vs.* Evander Murdock, defendant in error. Writ of error. Filed Sept. 22, 1873.

71 UNITED STATES OF AMERICA, *ss:*

To Evander Murdock, greeting:

You are hereby cited & admonished to be & appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the second circuit & northern district of New York, wherein The Town of Venice is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Nathan Clifford, senior associate judge, & acting Chief-Justice of the said Supreme Court of the United States, this 22d day of September, in the year of our Lord one thousand eight hundred & seventy-three.

WARD HUNT.

72 (Indorsed:) Supreme Court of United States. The Town of Venice, plaintiff in error. Evander Murdock, defendant in error. Citation. To keep & file.

UNITED STATES OF AMERICA,
Northern District of New York, Cayuga County, ss:

Warren A. Worden, of Auburn, in said county & district, being duly sworn, says that, on the 23d of Sept., 1873, he personally served a copy of the within citation on David Wright, esq., the plaintiff's attorney, by handing the same to & leaving it with him personally at his office, in Auburn, aforesaid.

WARREN A. WORDEN.

Sworn & subscribed to before me this 23d day of September, 1873.
CHARLES L. ADAMS,
U. S. Commissioner Northern Dist. of N. Y.

Due & personal service of a copy of the within citation is admitted, this 23d day of September, 1873.

D. WRIGHT,
Pltff.'s Atty.

Filed Sept. 24, 1873.

74 UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of the circuit court of the United States of America for the northern district of New York, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of Evander Murdock vs. The Town of Venice.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Utica, in said district, this 6th day of October, A. D. 1873.

[SEAL.] CHARLES MASON, *Clerk.*

(Indorsement on cover:) No. 264. The Town of Venice, plaintiff in error, vs. Evander Murdock. N. New York C. C. U. S. Filed 16 October, 1873.